



515 N. Flower Street
Santa Ana, CA 92703
(714) 834-3397
www.oc.ca.gov/lawlib

Transcript

Newsletter of the Orange County Public Law Library

August 2006
Volume 11 Issue 2

SEPARATE BRANCHES, BALANCED POWERS

by John Patrick Quigley

In the November 2005 *Transcript*, www.oc.ca.gov/lawlib/TRANS11-05.pdf, we provided references to library materials discussing the historical dichotomy between law and equity and the development of written Constitutions (“The Conscience of the King & the Rule of Law”). This article concerns America’s division of government power. Our Founding Fathers were primarily concerned with limiting the power of government, but separation also provides the electorate with more choices when voting.

Power was divided by two methods: between states and federal governments, and between three separate branches of the federal government. This article addresses the latter method, which was this year’s Law Day theme by the American Bar Association: “Separate Branches, Balanced Powers.” Their choice of words avoids the possible conflict between the concepts of separated powers and checks on those powers.

These concepts are discussed in *Treatise on Constitutional Law; Substance and Procedure*, GEN4 KF4550.R63 1999, and *Modern Constitutional Law*, GEN4 KF4550.A75 1997. Both of these multi-volume treatises have pocket supplements for this year, but the following two news items are too recent to be included in this year’s updates.

District Court Gives FBI a Search Warrant Against Congressman

Although weighty with Constitutional theory, this item also provides a little humor. Louisiana Congressman William Jefferson, a Democrat from New Orleans, was stung by FBI agents, who gave him \$100,000 for promised political actions. While searching his home pursuant to a warrant, they found most of the cold cash stored in his freezer. They then obtained a warrant to search his office in the House of Representatives, which they conducted while barring entry by any of the House’s staff. Both the Democratic and Republican leadership of the House objected and demanded return of the seized documents and computer hard drives. (Some have uncharitably suggested that this rare showing of bipartisanship was prompted by fears that they might be next.) The Attorney General and FBI Director reportedly threatened to resign if they were forced to return the seized material. President Bush ordered it sealed and delivered to the Solicitor General for safekeeping, while

(Continued on page 2)

SHOWING OUR “POWER”

by Steven Nadolny, Catalog Technician

And show our “power” we did! After having attended a planning meeting and setting up a brightly colored display, eight dedicated Orange County Public Law Library staff volunteers spent the day in “Flower Power” – this year’s Orange County Fair theme. Though we couldn’t give legal advice, staffers were stationed in the Orange County Agency building in varying shifts between 10 a.m. to

(Continued on page 3)

Inside This Issue

Coming Attractions	3
Ask a Librarian	3
Looking at the Web	3

the Department of Justice and House of Representatives tried to agree on some kind of compromise.

Jefferson sued for return of the material and got the same Judge who had issued the search warrant. The suit was based on the “Speech and Debate” clause in the Constitution (Article I, Section 6), contending that the material in his office pertained to his participation in the legislative process, which shouldn’t be reviewed by the Administration. It’s not every day that the Administration raids Congress, and this clause is not well known or often discussed. The Judge held that “Congressman Jefferson’s interpretation of the speech or debate privilege would have the effect of converting every congressional office into a taxpayer-subsidized sanctuary for crime.” He dismissed the suit, freeing prosecutors to review the material. However, on 7-28-06, an appellate panel barred them from doing so and ordered the trial judge to ensure that Jefferson got copies of the material and an opportunity to privately argue legislative privilege before the Judge. (For further developments, search in Google for: “congressman’s office”.)

Supreme Court Limits President’s Power to Authority Given By Congress

In *Hamdan v. Rumsfeld* (6-29-06), 2006 DAR 8443, the Supreme Court held that the government’s trial of an alleged terrorist from Yemeni, captured in Afghanistan, was unauthorized by legislation. This complex case occasioned discussion of many issues, including international law and legislative history. But in the last analysis, it was decided by Justice Kennedy’s balancing of what he deemed to be concurrent Presidential and Congressional powers.


Four more liberal Justices, Stevens (who wrote the decision of the Court), Ginsberg, Souter and Breyer, would have invalidated the Executive action on broader grounds. But Justice Kennedy, who provided a fifth vote, joined them only on narrow, procedural grounds, which seems typical of compromise positions: “I would rely on other deficiencies noted here and in the opinion by the Court – deficiencies that relate to the structure and procedure of the commission...as the basis for finding the military commissions lack authorization...” Perhaps his most portentous statement was: “Because Congress has prescribed these limits, Congress can change them, requiring a new analysis consistent with the Constitution and other governing laws.”

Three more conservative Justices, Scalia, Thomas and Alito, dissented. They presumably would have been joined by Chief Justice Roberts, who didn’t participate in the Supreme Court’s deliberations because he had been a member of the lower Appellate Court panel, which had ruled in favor of the Administration (415 F.3d 33). One of the dissent’s arguments was that the statute passed by Congress expressly precluded the Supreme Court of review power, but the majority interpreted it otherwise. Even if the minority’s interpretation is correct, the extent to which Congress can deprive the Judiciary of jurisdiction is yet another issue involving the separation of powers.


Historically, despotic rulers have used the pretense of war to accumulate power. But the President has little incentive to do so, since he does not have life tenure. The legal issues in the above case are not simple and the rulings were far from being unanimous. We submit that the President’s primary concern in these troubling times should be protection of our citizens, without too much second guessing in areas of legal uncertainty, about whether his actions meet all the requirements of law. Under the separation of powers principle, that is the Judiciary’s responsibility.

The Judicial Branch: More Equal Than the Others?

The Judiciary, and especially the Supreme Court, usually get the last word and are an important check on actions by both the Executive and Congress. But who checks the checkers? Early Constitutional theory referred to corresponding checks by the other branches over the Judiciary. But experience has shown that such checks are largely illusory. Constitutional rulings can be changed by Constitutional Amendment, a cumbersome process. Federal Judges do have life tenure and are nearly impossible to remove. For horror stories, see *Out of Order: Arrogance, Corruption and Incompetence on the Bench*, GEN4 KF8775.Z9B66 1998. For a kinder analysis, see *The Supreme Court and Constitutional Democracy*, GEN4 KF5130.A93 1984, especially the last chapter: “The Promise and Perils of an Active Court.”

The most important check that the other branches have over the Judiciary is that they appoint the Judges. The absence of any other meaningful control over the power of Judges after appointment has resulted in unhealthy politicization in their selection. 

11 p.m. on Wednesday, July 26th. We handed out California State Bar pamphlets and other information on a range of legal topics including finding a lawyer, family law, identity theft, etc. and our own Orange County Public Law Library brochure to an eager public. Our presence helped to raise public awareness for OCPLL.

Though this was our sixth year participating in the Fair, that there is an Orange County Public Law Library still surprised many fairgoers. To many we remain a secret. But in talking with fairgoers amidst the games, rides, food, fun and heat, staffers enjoyed the opportunity to “show our power” and hopefully educate our potential patrons. Many are looking forward to going back next year. So, “See you at the ‘07 Fair!” 

COMING ATTRACTIONS

by Mora Prestinary, Reference Librarian


Are you wondering about that big elevator in the new building? It will take you to the basement—GEN A—as we call it. For your greater convenience and ease, the following materials have been relocated there:

- ✧ Microfiche
- ✧ Audio/Video Cassettes
- ✧ Government Documents
- ✧ All State Materials KFA320 – KFW1230
- ✧ National Reporters
- ✧ Federal Reporters/Federal Supplement
- ✧ Patent Gazette
- ✧ International Materials K38 – KZ4000
- ✧ Bar Journals KF200
- ✧ Call Numbers A – K and L- Z

You will find a posted map with call numbers, to help you find your way.

Relocated to the new addition on the 3d floor are the following materials : Rutter Group titles, CEB titles, Restatements, one copy each of Deerings and West’s California Codes, California Forms of Pleading & Practice, and West’s Code Forms.

The materials that were on the 3rd floor,(next to the stairs), have been relocated to the 4th floor. The journals and law reviews are now on the 5th floor.

If you can’t find what you are looking for, please ask the staff for help. 




Ask a Librarian

Question of the Quarter

by Mora Prestinary, Reference Librarian

Q. I’ve lost my traffic citation. How do I find out what the citation is for and how much the fine will be?

A. In Orange County, contact the Traffic Division of the Superior Court **<http://www.occourts.org/traffic/>** . If in Los Angeles, contact **<http://www.lasuperiorcourt.org/traffic/>** 


LOOKING AT THE WEB

by Mora Prestinary, Reference Librarian



CALIFORNIA LEGISLATIVE HISTORY ON THE WEB

- ✧ Official site for California legislative information. All statutes enacted on or after January 1, 1993
<http://www.leginfo.ca.gov>
- ✧ Commonly requested California Legislative Histories
<http://www.lhclearinghouse.com/specificsections.htm>
- ✧ California Legislative History Internet Resources
<http://www.nocall.org/calif.htm>
- ✧ California Clerk Archive. Sessions of the California Legislature from 1849 – 2000: Journals, Statutes, and Histories
<http://192.234.213.35/clerkarchive/>

For more information, see *Searching California Legislative History at the Orange County Law Library*, on the Library’s web page, **<http://www.oc.ca.gov/lawlib/>** under *Legal Research/ Research Guides*. You can access the web links mentioned above directly from this page. 



Access our web site at
www.oc.ca.gov/lawlib

TECHNOLOGY AT ORANGE COUNTY PUBLIC LAW LIBRARY

LEGAL RESEARCH PROGRAMS

Witkin titles
Authority-Matthew Bender titles
Premise- Rutter Group

INTERNET ACCESS & DATABASES

LegalTrac- Legal Periodical
Citations
HeinOnLine- Federal Register,
U.S. Reports,
Law Reviews, Treaties
CEB Practice Libraries

LLMCDigital- Federal Documents
Westlaw- All States & Federal, Keycite,
Witkin titles, Shepards

OCPLL will be closed for the following Court Holidays

September 4, Labor Day
October 9, Columbus Day
November 10, Veterans Day (observed)
November 22—close at 4:00 p.m.
November 23 & 24, Thanksgiving Holiday

Regular Library Hours

Monday-Thursday	8 am-8 pm
Friday	8 am-6 pm
Saturday	9 am-6 pm

The Orange County Public Law Library
derives its income from a portion of the filing fees in civil cases heard in the
Superior Courts of Orange County, rather than from general tax funds.

Transcript Staff

Steven Nadolny
Mora Prestinary
John Quigley
Editor
Victoria Garrott-Collins

Copyright 2006
Orange County Public Law Library
Material may be reprinted with permission only